

**INGRASSIA FISHER & LORENZ, P.C.**

7150 E. CAMELBACK, SUITE 325

SCOTTSDALE, ARIZONA 85251

Telephone: (480) 385-5060

Facsimile: (480) 385-5061

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**FACSIMILE TRANSMITTAL SHEET**

TO:

Examiner: E.V. Woods

FROM:

Paul D. Amrozowicz, Reg. No. 45,264

COMPANY:

USPTO

DATE:

THURSDAY, SEPTEMBER 28, 2006

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SENDER'S REFERENCE NUMBER:

H0003570-5507

RE:

Response

RECIPIENTS REFERENCE NUMBER:

10/646,901

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

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NOTES/COMMENTS:

**FORMAL COMMUNICATION  
INTENDED FOR ENTRY**

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UTILITY PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of: Aaron James GANNON

Group Art Unit: 2672

Serial No.: 10/646,901

Examiner: E. V. Woods

Filed: August 22, 2003

Confirmation No.: 1338

For: SYSTEM AND METHOD FOR CHANGING THE RELATIVE SIZE OF A  
DISPLAYED IMAGE

Docket No.: H0003570--5507

Customer No.: 000128

<b>CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 C.F.R. § 1.8(a)</b>	
I hereby certify that this correspondence is being transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.	
on <u>9/28/06</u>	Signature: <u>Paul D. Amrozowicz</u>

**PETITION TO EXPUNGE INFORMATION PURSUANT TO 37 C.F.R. § 1.59**

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.59, Applicant hereby petitions the Commissioner to expunge information from the above-referenced application file. The subject matter of this request is not information forming part of the original disclosure, nor is it information that was submitted under MPEP § 724.02 or as part of the IDS. As such this petition to expunge is filed pursuant to 37 C.F.R. § 1.59(b) and is thus appropriately directed to the Office of Petitions for a decision thereof.

Sep. 26 2006

Information to be Expunged

In the final Office action mailed June 6, 2006, the Examiner included, under a sub-heading entitled "Duty of Disclosure," various statements regarding 37 C.F.R. § 1.56, and regarding an Information Disclosure Statement that was filed on October 17, 2005. Then, following a telephonic interview with the undersigned, the Examiner sent out an interview summary sheet dated September 7, 2006, indicating that these previous statements had been withdrawn.

Despite the Examiner's indication that his statements are withdrawn, the statements are, and will continue to remain of record. As will now be explained, Applicant submits that these statements were wholly inappropriate in that the statements are at least: (1) contrary to U.S. Patent and Trademark Office (USPTO) policies set forth in the Manual of Patent Examining Procedure (M.P.E.P.); and (2) inconsistent with legal precedent set forth by the Court of Appeals for the Federal Circuit (CAFC).

1. The Examiner's Statements are Contrary to USPTO Policies

It is well-settled that a high level of proof of intent to mislead the USPTO is required in order to find that a party has committed inequitable conduct. FMC Corp. v. Manitowoc Co., 835 F.2d 1411, 5 USPQ2d 1112 (Fed. Cir. 1987). This in part is why the M.P.E.P. explicitly states that "the Office will not comment upon duty of disclosure issues." M.P.E.P. § 2010. The rationale behind this policy is that "Office determinations would significantly add to the expense and time involved in obtaining a patent with little or no benefit to the patent owner or any other parties with an interest." Id. Nonetheless, rather than follow the rather explicit guidelines provided in the M.P.E.P., the Examiner in the instant application clearly commented upon the issue and indicated, if not explicitly, at least implicitly that Applicant failed to comply with the duty of disclosure requirement.

2. The Examiner's Statements are Contrary to CAFC Precedent

The Examiner indicates that the Written Opinion of an International Search Authority must be provided to the USPTO as part of an IDS in order to satisfy 37 C.F.R. § 1.56. The Written Opinion, as is known, is provided by either the International Search Authority (ISA) or an International Preliminary Examination Authority (IPEA), and

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expresses the Authority's opinion regarding the patentability of a claimed invention based on prior art cited in the International Search Report. In those instances where the USPTO is not designated as the ISA or IPEA, the Written Opinion is provided by a foreign patent office. For example, in many instances the European Patent Office (EPO) is designated as the ISA or IPEA.

The CAFC made it abundantly clear in ATD Corp. v. Lydall, Inc. 159 F.3d 534 (Fed. Cir. 1998) that opinions of foreign patent offices, such as Written Opinions generated by the EPO or other foreign offices, do not constitute material information as defined by 37 C.F.R. § 1.56. Specifically, the CAFC stated that "it is the reference itself, not the information generated in prosecuting foreign counterparts, that is material to prosecution in the United States. The details of foreign prosecution are not an additional category of information." Id. at 547 (citing Molins PLC v. Textron, Inc., 48 F.3d 1172, 1180 (Fed. Cir. 1995)).

#### Conclusion and Request

In view of the foregoing, Applicant's representative believes he has clearly established that the Examiner's statements on pages 2-4 of the Office action mailed June 5, 2006, and the Examiner's statements on the Interview Summary sheet mailed September 7, 2006 regarding Duty of Disclosure are appropriate for expungement. As such, Applicant's representative respectfully requests that this Petition be granted and that this information be expunged from the file wrapper of the instant application.

If for some reason Applicant has not paid a sufficient fee for this Petition, please consider this as authorization to charge Ingrassia, Fisher & Lorenz, Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

INGRASSIA FISHER & LORENZ

Dated: 9/28/06

By: 

Paul D. Amrozowicz  
Reg. No. 45,264  
(480) 385-5060

PTO/SB/17p (09-08)  
Approved for use through 03/31/2007. OMB 0651-0031  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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**PETITION FEE**  
**Under 37 CFR 1.17(f), (g) & (h)**  
**TRANSMITTAL**  
(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents  
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	10/646,901
Filing Date	August 22, 2003
First Named Inventor	Aaron James GANNON
Art Unit	2672
Examiner Name	E.V. Woods
Attorney Docket Number	H0003570-5507

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Enclosed is a petition filed under 37 CFR 1.59 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 200.00 is enclosed.  
This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.

**Payment of Fees** (small entity amounts are NOT available for the petition fees)

- ☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 50-2091:  
☒ petition fee under 37 CFR 1.17(f), (g) or (h) ☒ any deficiency of fees and credit of any overpayments  
 Enclose a duplicative copy of this form for fee processing.  
☐ Check in the amount of \$ \_\_\_\_\_ is enclosed.  
☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

**Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462**

For petitions filed under:

- § 1.38(a) - for revocation of a power of attorney by fewer than all applicants
- § 1.63(e) - to accord a filing date.
- § 1.67(a) - to accord a filing date.
- § 1.182 - for decision on a question not specifically provided for.
- § 1.183 - to suspend the rules.
- § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

**Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463**

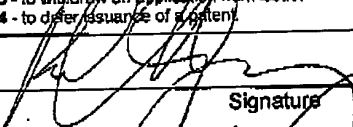
For petitions filed under:

- § 1.12 - for access to an assignment record.
- § 1.14 - for access to an application.
- § 1.47 - for filing by other than all the inventors or a person not the inventor.
- § 1.59 - for expungement of information.
- § 1.103(a) - to suspend action in an application.
- § 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 - for review of refusal to publish a statutory invention registration.
- § 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.650(c) - for patent owner requests for extension of time in *ex parte* reexamination proceedings.
- § 1.868 - for patent owner requests for extension of time in *inter partes* reexamination proceedings.
- § 5.12 - for expedited handling of a foreign filing license.
- § 5.15 - for changing the scope of a license.
- § 5.26 - for retroactive license.

**Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464**

For petitions filed under:

- § 1.19(g) - to request documents in a form other than that provided in this part.
- § 1.84 - for accepting color drawings or photographs.
- § 1.91 - for entry of a model or exhibit.
- § 1.102(d) - to make an application special.
- § 1.138(c) - to expressly abandon an application to avoid publication.
- § 1.313 - to withdraw an application from issue.
- § 1.314 - to defer issuance of a patent.

  
Paul D. Amrozowicz  
Typed or printed name

9/20/06  
Date  
45,264  
Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.